(3)

CF101

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

W.P. NO. 2459 /2003

PETITIONER : Jagdish Prasad Sharma
DEFENDANT NO.1 S/o. Dhanna Lal Sharma
Aged about 55 years, R/o.
Bharkapara, Rajnandgaon(C.G.)

VERSUS

RESPONDENTS/ 1 Gomti Bai, W/o. Banwari Lal Sharma
PLAINTIFF Aged about 35 years, R/o.
Mahukhurd, Post Mahukala
Gangapur City, (Rajasthan)
Through the Power of Attorney holder
Banwari Lal Sharma, S/o.
Kanhaiya Lal Sharma, R/o.
Mahukhurd, Post Mahukala
Distt.Sawaimadhavpur
Gangapur City (Rajasthan)

P. R. No. 2832/03
Presented by Shri Ahmad Siddiqui
dated 05/08/03

DEFENDANT NO.2 & 3

2. Baisakhin Bai Sahu, W/o. Dashruram Sahu, Aged about 98 years, R/o. Hiramoti Line Rajanandgaon Tahsil and Distt. Rajnandgaon (C.G.)

3. Naresh Baid, Aged about 39 years S/o. Bhawar Lal Baid, R/o. Sadarbazar Rajnandgaon Tah. & Distt. Rajnandgaon (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

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The petitioner most humbly and respectfully begs to state as under :-

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(49)

आदेश पत्रक

मामला क्रमांक W.P. 2453/2003 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

30/08/2003: -

Heard Shri Ravindra Agrawal counsel for the petitioner.

By this writ petition filed under Articles 226/227 of the Constitution of India the petitioner has challenged the order dated 26/06/2003 passed by the learned District Judge, Rajnandgaon in Civil Case No.7-A of 2002.

The case of the petitioner is that plaintiff/respondent No.1 filed a suit for declaration and injunction valuing the claim in suit for Rs.2.00 lacs and for declaration Rs.300/- for injunction. At the time of presentation of the plaint the court fee of Rs.530/- was paid. Notices wee issued. The petitioner raised an objection towards the maintainability of the suit on the ground that the suit was under valued. The value is more than rupees twelve lacs. Therefore, the plaintiff respondent No.1 is required to pay the ad valorem court fee which has not been paid by the plaintiff. Thus, the plaint of respondent No.1 was liable to be rejected. The order passed by the learned First Additional District Judge is Annexure-P/3. The plaint of respondent No.1 was returned for proper presentation. The plaintiff/respondent No.1 corrected the value of the claim of the suit and thereafter presented in the Court of District Judge, Rajnandgaon for adjudication. Later on, an application under Section 35 of the Court Fee Act has ben filed by the plaintiff mentioning therein that the plaintif has no means to pay

[पीछे देखें

(50)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 2459 सन् 2003

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the court fees. Therefore, she be exempted from the payment of ad valorem Court fee and the matter be adjudicated after exemption of the plaintiff from the payment of Court fee in the case.

Learned Court below conducted an enquiry in respect of the status of the plaintiff and the statement was also recorded for finding out the financial status of the plaintiff. The District Judge ordered exemption from payment of Court fee without considering the report submitted by the SDO (Revenue) Gangapur City. Therefore, the order of the learned District Judge be quashed.

I have heard the learned counsel appearing for the petitioner.

Rule 1 of Order XXXIII provides thus:

1. **Suits may be instituted by indigent person.**- Subject to the following provisions, any suit may be instituted by an {indigent person}.

{Explanation I.- A person is an indigent person,-

(a) If he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The plaintiff/respondent No.1 has moved an application that she is enable to pay the Court fee. On this, enquiry was conducted by the District Judge and after enquiry the learned District judge reached the conclusion that the plaintiff/respondent No.1 is not in a position to pay the Court fee. Therefore, the learned District Judge allowed the application. A perusal of the order reveals that the learned District Judge has passed the impugned order in which an opportunity was given to the petitioner to adduce evidence, but he was not able to adduce any evidence regarding the financial status of the respondent No.1. The impugned order has been passed after following the proper procedure and after giving the opportunity to both the parties to adduce the evidence. I do not find any reason to interfere with the impugned order in writ jurisdiction, as this Court cannot sit as appellate Court. There is no substance in this writ petition.

In the result, the petition is dismissed.

Sd/-
L.C. Bhadoo
Judge

Brajesh

[पीछे देखिये